

Business Regulation Committee

**Thursday, March 23, 2006
3:00 PM - 4:30 PM
Reed Hall**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Business Regulation Committee

Start Date and Time: Thursday, March 23, 2006 03:00 pm

End Date and Time: Thursday, March 23, 2006 04:30 pm

Location: Reed Hall (102 HOB)

Duration: 1.50 hrs

Consideration of the following bill(s):

HB 161 Mold Remediation and Assessment by Domino

HB 1367 Contracting Exemptions by Evers

HB 1383 Employee Leasing Companies by Bogdanoff

HB 1611 Practice of Interior Design by Goldstein

Consideration of the following proposed committee bill(s):

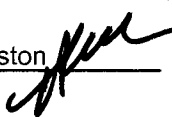
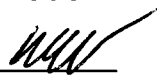
PCB BR 06-01 -- Repealing Authorization for Slot Machines in Miami-Dade County

According to rule 7.22(c), non-appointed members must file amendments by 5 p.m., Wednesday, March 22, 2006. The Chairman requests that committee member amendments also be filed by 5 p.m., Wednesday, March 22, 2006.

NOTICE FINALIZED on 03/21/2006 14:46 by REFFITT.NIKKI

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 161 Mold Remediation and Assessment
SPONSOR(S): Domino and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston 	Liepshutz 
2) Insurance Committee			
3) State Administration Appropriations Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

Currently, there are numerous companies in Florida that hold themselves out to be "certified" mold remediators or have "qualified mold remediation programs." However, there are no state guidelines or educational requirements to be a mold remediator or assessor. Certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. In Florida, such activities are limited to contractors licensed by the Construction Industry Licensing Board (CILB) of the Department of Business and Professional Regulation (DBPR) under chapter 489.

This bill creates s. 489.1134, F.S., to provide certification guidelines for those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license. In other words, if mold remediation is not the main business of that contractor, then they are not subject to the requirements of this subsection. Accordingly, contractors are not permitted to hold themselves out as specializing in mold or mold remediation unless they meet these educational requirements, and a contractor who is in violation of the provisions of this bill are subject to discipline under s. 489.129, F.S.

This bill creates ss. 501.933 and 501.934, F.S. Depending upon the field in which a person or business wishes to practice, the bill requires a certification in mold assessment or mold remediation. The certification may come from a non-profit organization that focuses upon indoor air quality or industrial hygiene or from a community college or university that provides such training or education in mold assessment or mold remediation.

This bill provides exemptions to certain groups from the requirements, but all others must be properly certified and maintain at least \$1m in liability insurance. Civil and criminal penalties are provided for violations of the provisions relating to mold assessment and mold remediation.

This bill will fiscally impact contractors whose work is primarily mold remediation due to the mold education requirements. It will fiscally impact mold assessors and remediators because it requires mold certification and liability insurance. The cost for education, certification, and insurance is unknown at this time.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill creates certification requirements for those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license. This bill requires mold assessors and noncontracting mold remediators to be certified and to carry at least \$1m in liability insurance. According to DBPR, this is a non-licensure alternative for regulating mold assessors and mold remediators.

B. EFFECT OF PROPOSED CHANGES:

Background

Molds can be found anywhere indoors and outdoors and they can grow on virtually any substance when moisture is present. The Center for Disease Control has reported that people who are exposed to mold may experience a variety of illnesses. Individuals exposed to mold commonly report problems such as: allergy symptoms, nasal and sinus congestion, cough, breathing difficulties, sore throat, skin and eye irritation, and upper respiratory infections.

There are no federal or state standards for acceptable mold levels in buildings or homes and no pure scientific evidence that mold poses a lethal health threat. However, possible health-related illnesses and property damage due to mold exposure have caused a significant increase in the number of lawsuits filed throughout the country, sometimes resulting in multi-million dollar damage awards.

In Florida, there have been many lawsuits based on mold-related illnesses and alleged "sick buildings." Responsibility for mold-related claims can include almost anyone involved in the construction and maintenance of a building, as well as real estate agents, prior owners, and management companies. Recovery of damages caused from mold depends on proof of actual damages and a determination of the cause of the mold contamination.

There are numerous companies throughout Florida that hold themselves out as "certified" mold remediators or having "qualified mold remediation programs." Remediation is the process of removing and cleaning materials and belongings contaminated with mold, treating areas affected or potentially affected by mold, and ensuring that mold does not reoccur after the remediation is done. Certain mold-related activities are regulated when those activities require that person to act in the capacity of a licensed contractor. That is, if the mold-related activity requires a person to act as a "contractor," as defined, in part, by s. 489.105, F.S., to mean a "person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others." In Florida, such activities are limited to contractors licensed by the CILB of the DBPR under Chapter 489.

Effect of proposed changes

This bill creates s. 489.1134, F.S., to provide certification guidelines for those who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license. In other words, if mold remediation is not the main business of that contractor, then they are not subject to the requirements of this subsection. Accordingly, contractors are not permitted to hold themselves out as emphasizing in mold or mold remediation unless they meet these educational requirements, and a contractor who is in violation of the provisions of this bill are subject to discipline under s. 489.129, F.S.

Though the contractor need not meet the educational requirements of this bill, this bill requires that any other natural person employed by a licensed contractor to work on mold or perform mold remediation must take a mold education course approved by the CILB. However, according to the DBPR, this provision relating to employees of contractors performing mold remediation would only apply when a contractor is performing mold remediation that is not incidental to the scope of the contractor's license.

The bill states that it is the responsibility of the contractor licensed under this part of the statute to ensure that members of his or her workforce who are engaging in business as a contractor with a focus or emphasis on mold or mold remediation that is not incidental to the scope of the contractor's license are in compliance with the provisions of this bill. If workforce members are not in compliance with the bill's certification guidelines, the contractor is again subject to discipline under s. 489.129, F.S.

The bill requires that training programs must be evaluated annually by the CILB to ensure that they have been provided equitably across the state. Further, the CILB should periodically review the content and instruction quality of the required training and respond to complaints involving said programs.

This bill requires a contractor, or any other natural person who is employed by a licensed contractor as defined by the section, to have the appropriate course work in order to perform mold or mold related activities. The type and number of courses that will be required of those who engage in business as a contractor with a focus on mold or mold remediation is left to the discretion of the CILB.

This bill defines mold to mean "an organism of the class fungi that causes disintegration of organic matter and produces spores and includes any spores, hyphae, and mycotoxins produced by mold," and mold remediation to mean "the business as a contractor related to mold or mold-contaminated matter."

The bill creates s. 501.933, F.S., and s. 501.934, F.S., relating to mold assessors and remediators. This bill provides definitions for mold assessment, mold assessor, noncontracting mold remediation, and noncontracting mold remediators. Noncontracting mold remediators are persons performing mold remediation work that does not require licensure under chapter 489.

Depending upon the field in which a person or business wishes to practice, the bill requires a certification in mold assessment or mold remediation. The certification may come from a non-profit organization that focuses upon indoor air quality or industrial hygiene, so long as the certification meets certain requirements. The certification may also come from a community college or university that provides such training or education in mold assessment or mold remediation.

The bill provides exemptions to these requirements if the person performing the assessment or remediation satisfies one of the following criteria: a residential property owner working on his or her own property; an owner, tenant, managing agent, or employee that works on owned or leased property; employee working for and supervised by the certified person; those working on behalf of an insurer; or an employee of a governmental entity or school, who does not engage in mold assessment or remediation. The bill provides an exemption for individuals in the manufactured housing industry.

The bill provides prohibitions on who may perform mold assessment or remediation. The bill prohibits mold assessors from performing mold remediation or holding an interest in a mold remediation company, and vice versa. It provides criminal and civil penalties for violating the bill's prohibitions.

The bill requires at least \$1m in liability insurance for those performing mold assessment or remediation.

The bill provides for a statute of limitations for commencing actions and provision for enforcing violations as provided by part II of chapter 501.

C. SECTION DIRECTORY:

Section 1 creates s. 489.1134, F.S., and provides mold remediation certification guidelines for contractors licensed under chapter 489.

Section 2 creates s. 501.933, F.S., and provides certification guidelines, insurance requirements, and penalty provisions mold assessors.

Section 3 creates s. 501.934, F.S., and provides certification guidelines, insurance requirements, and penalty provisions mold remediators not licensed under chapter 489.

Section 4 provides a statement of intent.

Section 5 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Committee has not received an updated fiscal statement from the DBPR and as a result no fiscal information regarding the impact of this bill is available at this time. However, it could be anticipated that the fiscal impact on the DBPR would not be outside their scope of normal operations.

2. Expenditures:

Expenditures relating to the implementation of these new criteria are unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who engage in business as a contractor with a focus on mold or mold remediation that is not incidental to the scope of his or her license will incur the costs of educational requirements, as specified by the CILB. These costs are unknown at this time.

Persons who engage in business as a mold assessor or mold remediators would be required to be certified and carry at least \$1m in liability insurance. The cost for the certification and liability insurance requirements is unknown.

D. FISCAL COMMENTS:

See comments above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not seem to require counties or municipalities to spend funds or to take action requiring the expenditure of funds. The bill does not seem to reduce the percentage of a state tax shared with counties or municipalities. The bill does not seem to reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill specifies that a contractor shall take the courses or the number of course hours determined by the CILB.

The bill specifies that a person who is employed by a contractor shall take a course approved by the CILB.

C. DRAFTING ISSUES OR OTHER COMMENTS:

During the 2005 Regular Session, HB 315 was adopted to provide for certification of mold assessors and mold remediators, provide for insurance requirements, and provide for civil penalties under the Florida Deceptive and Unfair Trade Practices Act. Governor Bush vetoed House Bill 315

The Governor stated his concern that the bill would have unintended consequences, including putting some legitimate and responsible employees out of business. Since the bill grandfathered some home inspectors but did not provide for the grandfathering of responsible and experienced mold assessors and remediators, the Governor stated that this will likely put employees and companies that cannot complete the bill's education and training requirements by January 1, 2006 out of business.

The Governor stated that the bill was somewhat ambiguous and lacked clear guidance to the industry in some areas including, a lack of clear educational and examination requirements. While the bill required training, the Governor stated that there were no specifics regarding the kind of curriculum and/or standards necessary for home inspectors, mold assessors, or mold remediators. The Governor further stated that the bill appears to arbitrarily require high school and college degrees while presenting no clear reasons for the requirements.

The Governor stated that there was some question about whether the mold-specific insurance policy required for mold assessors and a general liability insurance policy with a mold insurance pollution rider required for non-contracting mold remediators, both in an amount not less than \$1 million, would be available by the required date of October 1, 2005. The Governor stated that there was a further concern that this will have the unintended effect of allowing insurers to deny payments for mold claims under a homeowner policy if work on a home has been performed by a mold assessor or remediator.

The Governor stated that he agreed with the bill's sponsors that additional consumer protection is warranted in these fields. He directed the DBPR's Secretary to work with the various stakeholders during the interim to develop proposed legislation. The department conducted workshops on mold assessment and remediation and a workshop on home inspections. The workshops culminated in a report issued on February 2, 2006 regarding alternatives to licensure.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to mold remediation and assessment;
 creating s. 489.1134, F.S.; providing educational
 requirements and procedural requirements for mold
 remediation certification; providing for discipline;
 requiring review of mold remediation training programs;
 requiring a person certified under this section to be
 present on certain job sites; assigning responsibility for
 workforce compliance; requiring compliance; providing
 definitions; creating s. 501.933, F.S.; providing
 definitions; providing requirements for practice as a mold
 assessor; providing exemptions; providing prohibited acts
 and penalties; requiring that mold assessors maintain
 liability insurance; providing that mold assessors do not
 have a duty to provide repair cost estimates; providing
 limitations; providing for enforcement of violations;
 creating s. 501.934, F.S.; providing definitions;
 providing requirements for practice as a noncontracting
 mold remediator; providing exemptions; providing
 prohibited acts and penalties; requiring that
 noncontracting mold remediators maintain liability
 insurance; providing limitations; providing for
 enforcement of violations; providing legislative findings
 and intent with respect to the objectives of the act and
 protection of homeowners; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

29 Section 1. Section 489.1134, Florida Statutes, is created
30 to read:

31 489.1134 Mold remediation certification.--

32 (1)(a) In addition to the certification or registration
33 required to engage in business as a contractor under this part,
34 any contractor who wishes to engage in business as a contractor
35 with a focus or emphasis on mold or mold remediation that is not
36 incidental to the scope of his or her license shall take the
37 courses or the number of course hours determined by the board.
38 Such courses or course hours may count as part of the
39 contractor's continuing education requirement and shall be given
40 by an instructional facility or teaching entity that has been
41 approved by the board. Upon successful completion of the course,
42 courses, or course hours, the instructional facility or teaching
43 entity that has been approved by the board shall report such
44 completion to the department and issue to the taker of the
45 course a certificate of completion, which shall be available for
46 inspection by any entity or person seeking to have the
47 contractor engage in business as a contractor with a focus or
48 emphasis on mold or mold remediation that is not incidental to
49 the license of the contractor.

50 (b) Any other person who is employed by a licensed
51 contractor to provide work on mold or mold remediation shall, as
52 a prerequisite to his or her authorization to provide such
53 service, take a course approved by the board.

54 (c) It is the responsibility of the contractor licensed
55 under this part to ensure that members of his or her workforce
56 who are engaging in business as a contractor with a focus or

emphasis on mold or mold remediation that is not incidental to the scope of the contractor's license are in compliance with this section, and such contractor is subject to discipline under s. 489.129 for violation of this section.

(d) Training programs in mold remediation shall be reviewed annually by the board to ensure that programs have been provided equitably across the state.

(e) Periodically, the board shall review training programs in mold remediation for quality in content and instruction. The board shall also respond to complaints regarding approved programs.

(2)(a) A contractor qualified under paragraph (1)(a) must be present on any job site at which a person is engaging in business as a contractor with a focus or emphasis on mold or mold remediation that is not incidental to the scope of his or her license.

(b) It is the responsibility of the licensed contractor to ensure compliance with paragraph (a), and such contractor is subject to discipline under s. 489.129 for violation of this subsection.

(3) No contractor shall hold himself or herself out as emphasizing in mold or mold remediation unless the contractor is in compliance with this section.

(4) The term "mold" means an organism of the class fungi that causes disintegration of organic matter and produces spores, and includes any spores, hyphae, and mycotoxins produced by mold. The term "mold remediation" means the business as a contractor related to mold or mold-contaminated matter.

Section 2. Section 501.933, Florida Statutes, is created to read:

501.933 Mold assessors; requirements; exemptions; prohibited acts and penalties; bond and insurance; limitations and enforcement.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Mold" means an organism of the class fungi that causes disintegration of organic matter and produces spores, and includes any spores, hyphae, and mycotoxins produced by mold.

(b) "Mold assessment" means:

1. An inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

2. The development of a mold-management plan or mold-remediation protocol; or

3. The collection or analysis of a mold sample.

(c) "Mold assessor" means any person that performs or directly supervises a mold assessment.

(2) REQUIREMENTS FOR PRACTICE.--

(a) A person shall not work as a mold assessor unless he or she has evidence of, or works under the direct supervision of a person who has evidence of, a certification from either:

1. A nonprofit organization with a focus on indoor air quality or industrial hygiene that meets each of the following criteria:

a. Requires that a person may not obtain certification unless the person has at least a 2-year degree in a scientific

113 or building science field and 3 years of documented experience
114 from a qualified mold assessor, or requires a 4-year degree in a
115 scientific or building science field.

116 b. Requires the person to pass an examination testing
117 knowledge related to mold and mold assessment; or

118 2. A community college or university that offers mold-
119 assessment training or education.

120 (b) A business entity may not provide or offer to provide
121 mold-assessment services unless the business entity satisfies
122 all of the requirements of this section.

123 (3) EXEMPTIONS.--The following persons are not required to
124 comply with this section with regard to any mold assessment:

125 (a) A residential property owner who performs mold
126 assessment on his or her own property.

127 (b) An owner or tenant, or a managing agent or employee of
128 an owner or tenant, who performs mold assessment on property
129 owned or leased by the owner or tenant. This exemption does not
130 apply if the managing agent or employee engages in the business
131 of performing mold assessment for the public.

132 (c) An employee of a licensee who performs mold assessment
133 while directly supervised by the mold assessor.

134 (d) Individuals or business organizations licensed under
135 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
136 or acting on behalf of an insurer under part VI of chapter 626,
137 or individuals in the manufactured housing industry who are
138 licensed under chapter 320, that are not specifically engaged in
139 mold assessment but that are acting within the scope of their
140 respective licenses.

141 (e) An authorized employee of the United States, this
142 state, or any municipality, county, or other political
143 subdivision, or public or private school, who meets the
144 requirements of subsection (2) and who is conducting mold
145 assessment within the scope of that employment, as long as the
146 employee does not hold out for hire or otherwise engage in mold
147 assessment.

148 (4) PROHIBITED ACTS; PENALTIES.--

149 (a) A mold assessor, a company that employs a mold
150 assessor, or a company that is controlled by a company that also
151 has a financial interest in a company employing a mold assessor
152 may not:

153 1. Perform or offer to perform any mold assessment without
154 complying with the requirements of this section.

155 2. Perform or offer to perform any mold remediation to a
156 structure on which the mold assessor or the mold assessor's
157 company provided a mold assessment within the last 12 months.

158 3. Inspect for a fee any property in which the assessor or
159 the assessor's company has any financial or transfer interest.

160 4. Accept any compensation, inducement, or reward from a
161 mold remediator or mold remediator's company for the referral of
162 any business to the mold remediator or the mold remediator's
163 company.

164 5. Offer any compensation, inducement, or reward to a mold
165 remediator or mold remediator's company for the referral of any
166 business from the mold remediator or the mold remediator's
167 company.

168 6. Accept an engagement to make an omission of the

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assessment or conduct an assessment in which the assessment itself, or the fee payable for the assessment, is contingent upon the conclusions of the assessment.

(b) Any person who violates any provision of this subsection commits:

1. A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2. A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

3. A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) INSURANCE.--A mold assessor must maintain a mold-specific insurance policy in an amount of not less than \$1 million.

(6) REPAIR COST ESTIMATES.--Mold assessors are not required to provide estimates related to the cost of repair of an assessed property.

(7) STATUTE OF LIMITATIONS.--Chapter 95 governs the time at which an action to enforce an obligation, a duty, or a right arising under this section must be commenced.

(8) ENFORCEMENT OF VIOLATIONS.--Subject to the exceptions set forth in s. 501.212, a violation of this section may constitute a deceptive and unfair trade practice, which may be remedied as provided in part II of this chapter.

Section 3. Section 501.934, Florida Statutes, is created to read:

501.934 Noncontracting mold remediators; requirements;

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exemptions; prohibited acts and penalties; bond and insurance;
limitations and enforcement.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Mold" means an organism of the class fungi that
causes disintegration of organic matter and produces spores, and
includes any spores, hyphae, and mycotoxins produced by mold.

(b) "Noncontracting mold remediation" means the removal,
cleaning, sanitizing, demolition, or other treatment, including
preventive activities, of mold or mold-contaminated matter that
was not purposely grown at that location; however, such removal,
cleaning, sanitizing, demolition, or other treatment, including
preventive activities, may not be work that requires a license
under chapter 489 unless performed by a person who is licensed
under that chapter or the work complies with that chapter.

(c) "Noncontracting mold remediator" means any person that
performs mold remediation. A noncontracting mold remediator may
not perform any work that requires a license under chapter 489
unless the noncontracting mold remediator is also licensed under
that chapter or complies with that chapter.

(2) REQUIREMENTS FOR PRACTICE.--

(a) A person shall not work as a noncontracting mold
remediator unless he or she has evidence of, or works under the
direct supervision of a person who has evidence of, a
certification from either:

1. A nonprofit organization with a focus on mold
remediation that meets each of the following criteria:

a. Requires that a person has at least a high school
diploma and at least 2 years' experience in a field related to

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225 mold remediation;
 226 b. Requires that a person has completed training related
 227 to mold and mold remediation; and
 228 c. Requires the person to pass an examination testing
 229 knowledge related to mold and mold remediation; or
 230 2. A community college or university that offers mold
 231 remediation training or education.
 232 (b) A business entity may not provide or offer to provide
 233 mold remediation services unless the business entity satisfies
 234 all of the requirements of this section.
 235 (3) EXEMPTIONS.--The following persons are not required to
 236 comply with this section with regard to any noncontracting mold
 237 remediation:
 238 (a) A residential property owner who performs
 239 noncontracting mold remediation on his or her own property.
 240 (b) An owner or tenant, or a managing agent or employee of
 241 an owner or tenant, who performs noncontracting mold remediation
 242 on property owned or leased by the owner or tenant so long as
 243 such remediation is within the routine maintenance of a building
 244 structure. This exemption does not apply if the managing agent
 245 or employee engages in the business of performing noncontracting
 246 mold remediation for the public.
 247 (c) An employee of a licensee who performs noncontracting
 248 mold remediation while directly supervised by the noncontracting
 249 mold remediator.
 250 (d) Individuals or business organizations licensed under
 251 chapter 471, part I of chapter 481, chapter 482, or chapter 489,
 252 or acting on behalf of an insurer under part VI of chapter 626,

253 or individuals in the manufactured housing industry who are
254 licensed under chapter 320, that are not specifically engaged in
255 mold remediation but that are acting within the scope of their
256 respective licenses.

257 (e) An authorized employee of the United States, this
258 state, or any municipality, county, or other political
259 subdivision, or public or private school, who meets the
260 requirements of subsection (2) and who is conducting mold
261 remediation within the scope of that employment, as long as the
262 employee does not hold out for hire or otherwise engage in mold
263 remediation.

264 (4) PROHIBITED ACTS; PENALTIES.--

265 (a) A noncontracting mold remediator, a company that
266 employs a noncontracting mold remediator, or a company that is
267 controlled by a company that also has a financial interest in a
268 company employing a noncontracting mold remediator may not:

269 1. Perform or offer to perform any mold remediation
270 without complying with the requirements of this section.

271 2. Perform or offer to perform any mold assessment as
272 defined in s. 501.933.

273 3. Remediate for a fee any property in which the
274 noncontracting mold remediator or the noncontracting mold
275 remediator's company has any financial or transfer interest.

276 4. Accept any compensation, inducement, or reward from a
277 mold assessor or mold assessor's company for the referral of any
278 business from the mold assessor or the mold assessor's company.

279 5. Offer any compensation, inducement, or reward to a mold
280 assessor or mold assessor's company for the referral of any

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business from the mold assessor or the mold assessor's company.

(b) Any person who violates any provision of this subsection commits:

1. A misdemeanor of the second degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2. A misdemeanor of the first degree for a second violation, punishable as provided in s. 775.082 or s. 775.083.

3. A felony of the third degree for a third or subsequent violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) INSURANCE.--A noncontracting mold remediator shall maintain a general liability insurance policy with a mold insurance pollution rider in an amount of not less than \$1 million.

(6) STATUTE OF LIMITATIONS.--Chapter 95 governs the time at which an action to enforce an obligation, a duty, or a right arising under this section must be commenced.

(7) ENFORCEMENT OF VIOLATIONS.--Subject to the exceptions set forth in s. 501.212, a violation of this section may constitute a deceptive and unfair trade practice, which may be remedied as provided in part II of this chapter.

Section 4. It is the intent of the Legislature pursuant to s. 11.62, Florida Statutes, that the professions and occupations covered by the act be regulated in a manner that does not unnecessarily restrict entry into the profession or occupation pursuant to this act. The Legislature finds that this act provides a measure of protection for homeowners by providing education and experience requirements and testing necessary to

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309 | protect homeowners' investments in their homes.

310 | Section 5. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 0161

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Business Regulation Committee
Representative(s) Domino offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Part XV of chapter 468, Florida Statutes,
consisting of sections 468.83, 468.831, 468.832, 468.833,
468.834, 468.835, 468.836, 468.837, and 468.838, is created to
read:

468.83 Legislative intent.--It is the intent of the
Legislature pursuant to s. 11.62 that professions and
occupations covered by this part be regulated in a manner that
does not unnecessarily restrict entry into such professions or
occupations. The Legislature finds that this part provides a
measure of protection for homeowners by providing education,
experience, and testing requirements for persons in such
professions or occupations necessary to protect homeowners'
investments in their homes.

468.831 Definitions.--As used in this part, the term:

(1) "Mold" means an organism of the class fungi that
causes disintegration of organic matter and produces spores, and
includes any spores, hyphae, and mycotoxins produced by mold.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 (2) "Mold assessment" means:

24 (a) An investigation or survey of a dwelling or other
25 structure to provide the owner or occupant with information
26 regarding the presence, identification, or evaluation of mold;

27 (b) The development of a mold-management plan or mold-
28 remediation protocol; or

29 (c) The collection or analysis of a mold sample.

30 (3) "Mold assessor" means any person who performs or
31 directly supervises a mold assessment.

32 (4) "Mold remediation" means the removal, cleaning,
33 sanitizing, demolition, or other treatment, including preventive
34 activities, of mold or mold-contaminated matter that was not
35 purposely grown at that location; however, such removal,
36 cleaning, sanitizing, demolition, or other treatment, including
37 preventive activities, may not be work that requires a license
38 under chapter 489 unless performed by a person who is licensed
39 under that chapter or the work complies with that chapter.

40 (5) "Mold remediator" means any person who performs mold
41 remediation. A mold remediator may not perform any work that
42 requires a license under chapter 489 unless the mold remediator
43 is also licensed under that chapter or complies with that
44 chapter.

45 468.832 Requirements for practice.--

46 (1) A person shall not work as a mold assessor or mold
47 remediator unless he or she has evidence of, or works under the
48 direct supervision of a person who has evidence of, the
49 following:

50 (a) At least a 2-year degree in microbiology, engineering,
51 architecture, industrial hygiene, or a related field of science
52 from an accredited institution, along with a minimum of 1 year
53 of documented field experience in conducting microbial sampling

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54 or investigations, or a high school diploma, a GED, or the
55 equivalent with a minimum of 2 years of documented field
56 experience in conducting microbial sampling or investigations.

57 (b) A certification related to performing mold assessment
58 or mold remediation, respectively. Such certification may be
59 issued by a not-for-profit industry association, society, or
60 certification body or by a college or university that offers
61 mold assessment training or education. Qualified certification
62 programs shall be accredited by a nationally recognized
63 independent accrediting entity that sets programs and standards
64 that comply with American Society for Testing and Materials
65 Standard E1929-98, Standard Practice for Assessment of
66 Certification Programs for Environmental Professionals:
67 Accreditation Criteria, or the equivalent.

68 (2) A business entity may not provide or offer to provide
69 mold assessment or mold remediation services unless the business
70 entity satisfies all of the requirements of this part.

71 468.833 Exemptions.--

72 (1) The following persons are not required to comply with
73 this part with regard to any mold assessment:

74 (a) A residential property owner who performs mold
75 assessment on his or her own property.

76 (b) An owner or tenant, or a managing agent or employee of
77 an owner or tenant, who performs mold assessment on property
78 owned or leased by the owner or tenant. This exemption does not
79 apply if the managing agent or employee engages in the business
80 of performing mold assessment for the public.

81 (c) An employee of a licensee who performs mold assessment
82 while directly supervised by the mold assessor.

83 (d) Individuals or business organizations that are not
84 specifically engaged in mold assessment but are acting within

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the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, or chapter 489, are acting on behalf of an insurer under part VI of chapter 626, or are individuals in the manufactured housing industry who are licensed under chapter 320.

(e) An authorized employee of the United States, this state, or any municipality, county, or other political subdivision, or public or private school, who meets the requirements of s. 468.832 and who is conducting mold assessment within the scope of that employment, as long as the employee does not hold out for hire or otherwise engage in mold assessment.

(2) The following persons are not required to comply with this part with regard to any mold remediation:

(a) A residential property owner who performs mold remediation on his or her own property.

(b) An owner or tenant, or a managing agent or employee of an owner or tenant, who performs mold remediation on property owned or leased by the owner or tenant so long as such remediation is within the routine maintenance of a building structure. This exemption does not apply if the managing agent or employee engages in the business of performing mold remediation for the public.

(c) An employee of a mold remediator while directly supervised by the mold remediator.

(d) Individuals or business organizations that are not specifically engaged in mold remediation but that are acting within the scope of the respective licenses required under chapter 471, part I of chapter 481, chapter 482, or chapter 489, are acting on behalf of an insurer under part VI of chapter 626,

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115 or are individuals in the manufactured housing industry who are
116 licensed under chapter 320.

117 (e) An authorized employee of the United States, this
118 state, or any municipality, county, or other political
119 subdivision, or public or private school, who meets the
120 requirements of s. 468.832 and who is conducting mold
121 remediation within the scope of that employment, as long as the
122 employee does not hold out for hire or otherwise engage in mold
123 remediation.

124 468.834 Prohibited acts; penalties.--

125 (1) A mold assessor, a company that employs a mold
126 assessor, or a company that is controlled by a company that also
127 has a financial interest in a company employing a mold assessor
128 may not:

129 (a) Perform or offer to perform any mold assessment
130 without complying with the requirements of this part.

131 (b) Perform or offer to perform any mold remediation to a
132 structure on which the mold assessor or the mold assessor's
133 company provided a mold assessment within the last 12 months.

134 (c) Inspect for a fee any property in which the assessor
135 or the assessor's company has any financial or transfer
136 interest.

137 (d) Accept any compensation, inducement, or reward from a
138 mold remediator or mold remediator's company for the referral of
139 any business to the mold remediator or the mold remediator's
140 company.

141 (e) Offer any compensation, inducement, or reward to a
142 mold remediator or mold remediator's company for the referral of
143 any business from the mold remediator or the mold remediator's
144 company.

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145 (f) Accept an engagement to make an omission of the
146 assessment or conduct an assessment in which the assessment
147 itself, or the fee payable for the assessment, is contingent
148 upon the conclusions of the assessment.

149 (2) A mold remediator, a company that employs a mold
150 remediator, or a company that is controlled by a company that
151 also has a financial interest in a company employing a mold
152 remediator may not:

153 (a) Perform or offer to perform any mold remediation
154 without complying with the requirements of this part.

155 (b) Perform or offer to perform any mold assessment as
156 defined in s. 468.831.

157 (c) Remediate for a fee any property in which the mold
158 remediator or the mold remediator's company has any financial or
159 transfer interest.

160 (d) Accept any compensation, inducement, or reward from a
161 mold assessor or mold assessor's company for the referral of any
162 business from the mold assessor or the mold assessor's company.

163 (e) Offer any compensation, inducement, or reward to a
164 mold assessor or mold assessor's company for the referral of any
165 business from the mold assessor or the mold assessor's company.

166 (3) Any person who violates any provision of this section
167 commits:

168 (a) A misdemeanor of the second degree for a first
169 violation, punishable as provided in s. 775.082 or s. 775.083.

170 (b) A misdemeanor of the first degree for a second
171 violation, punishable as provided in s. 775.082 or s. 775.083.

172 (c) A felony of the third degree for a third or subsequent
173 violation, punishable as provided in s. 775.082, s. 775.083, or
174 s. 775.084.

175 468.835 Insurance.--

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176 (1) A mold assessor must maintain general liability and
177 errors and omissions insurance coverage in an amount of not less
178 than \$250,000.

179 (2) A mold remediator must maintain general liability
180 insurance policy in an amount of not less than \$500,000 that
181 includes specific coverage for mold related claims.

182 468.836 Contracts.--A contract to perform mold assessment
183 or mold remediation must be in a record, signed or otherwise
184 authenticated by the parties. A mold assessment contract is not
185 required to provide estimates related to the cost of repair of
186 an assessed property. A mold assessment contract is not required
187 to provide estimates.

188 468.837 Statute of limitations.--Chapter 95 governs the
189 time at which an action to enforce an obligation, a duty, or a
190 right arising under this part must be commenced.

191 468.838 Grandfather clause.--The provisions of this part
192 shall become effective upon becoming law and shall allow for a
193 period of 2 years after enactment in which persons currently
194 performing mold assessment or mold remediation as described
195 under this part have to complete the requirements of this part.

196 Section 2. Part XVI of chapter 468, Florida Statutes,
197 consisting of sections 468.841, 468.842, 468.843, 468.844,
198 468.845, 468.846, 468.847, and 468.848, is created to read:

199 468.841 Definitions.--As used in this part, the term:

200 (1) "Home" means any residential real property, or
201 manufactured or modular home, that is a single-family dwelling,
202 duplex, triplex, quadruplex, condominium unit, or cooperative
203 unit. The term does not include the common areas of condominiums
204 or cooperatives.

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205 (2) "Home inspector" means any person who provides or
206 offers to provide a home inspection for a fee or other
207 compensation.

208 (3) "Home inspection" means a limited visual examination
209 of one or more of the readily accessible installed systems and
210 components of a home, including, but not limited to, the
211 structure, electrical system, HVAC system, roof covering,
212 plumbing system, interior components, exterior components, and
213 site conditions that affect the structure, for the purpose of
214 providing a written professional opinion of the condition of the
215 home.

216 468.842 Requirements for practice.--

217 (1) A person may not work as a home inspector unless he or
218 she:

219 (a) Has successfully completed a course of study of not
220 less than 80 hours, which requires a passing score on a
221 psychometrically valid examination in home inspections, and
222 which includes, but is not limited to, each of the following
223 components of a home: structure; electrical system; roof
224 covering; plumbing system; interior components; exterior
225 components; and site conditions that affect the structure, and
226 heating, ventilation, and cooling systems. Courses of study
227 prescribed under this section must be accredited by a nationally
228 recognized third-party independent accrediting entity that sets
229 programs and standards that ensure certificant competence.

230 (b) Annually completes 8 hours of continuing education
231 related to home inspections.

232 (c) Discloses to the consumer in writing prior to
233 contracting for or commencing a home inspection:

234 1. That the home inspector meets the education and
235 examination requirements of this section.

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2. That the home inspector maintains the commercial general liability insurance policy as required by this part.

3. The scope and any exclusions of the home inspection.

4. A statement of experience that includes either the approximate number of home inspections the home inspector has performed for a fee or the number of years of experience as a home inspector.

(2) A business entity may not provide or offer to provide home inspection services unless each of the home inspectors employed by the business entity satisfies all the requirements of this part.

(3) A business entity may not use, in connection with the name or signature of the business entity, the title "home inspectors" to describe the business entity's services unless each of the home inspectors employed by the business entity satisfies all the requirements of this part.

468.843 Exemptions.--The following persons are not required to comply with this part when acting within the scope of practice authorized by such license, except when such persons are conducting, producing, disseminating, or charging a fee for a home inspection or otherwise operating within the scope of this part:

(1) A construction contractor licensed under chapter 489.

(2) An architect licensed under chapter 481.

(3) An engineer licensed under chapter 471.

(4) A building code administrator, plans examiner, or building code inspector licensed under part XII of chapter 468.

(5) A certified real estate appraiser, licensed real estate appraiser, or registered real estate appraiser licensed under part II of chapter 475.

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266 (6) An inspector whose report is being provided to, and is
267 solely for the benefit of, the Federal Housing Administration or
268 the Veterans Administration.

269 (7) An inspector conducting inspections for wood-
270 destroying organisms on behalf of a licensee under chapter 482.

271 (8) A firesafety inspector certified under s. 633.081.

272 (9) An insurance adjuster licensed under part VI of
273 chapter 626.

274 (10) An officer appointed by the court.

275 (11) A master septic tank contractor licensed under part
276 III of chapter 489.

277 (12) A certified energy auditor performing an energy audit
278 of any home or building conducted under chapter 366 or rules
279 adopted by the Public Service Commission.

280 (13) A mobile home manufacturer, dealer, or installer
281 regulated or licensed under chapter 320 and any employees or
282 agents of the manufacturer, dealer, or installer.

283 468.844 Prohibited acts; penalties.--

284 (1) A home inspector, a company that employs a home
285 inspector, or a company that is controlled by a company that has
286 a financial interest in a company employing a home inspector may
287 not:

288 (a) Perform or offer to perform, prior to closing, for any
289 additional fee, any repairs to a home on which the inspector or
290 the inspector's company has prepared a home inspection report.
291 This paragraph does not apply to a home warranty company that is
292 affiliated with or retains a home inspector to perform repairs
293 pursuant to a claim made under a home warranty contract.

294 (b) Inspect for a fee any property in which the inspector
295 or the inspector's company has any financial or transfer
296 interest.

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297 (c) Offer or deliver any compensation, inducement, or
298 reward to the owner of the inspected property, or any broker or
299 agent therefor, for the referral of any business to the
300 inspector or the inspector's company.

301 (d) Accept an engagement to make an omission or prepare a
302 report in which the inspection itself, or the fee payable for
303 the inspection, is contingent upon the conclusions in the
304 report, the preestablished findings, or the close of escrow.

305 (2) Any person who violates any provision of this section
306 commits:

307 (a) A misdemeanor of the second degree for a first
308 violation, punishable as provided in s. 775.082 or s. 775.083.

309 (b) A misdemeanor of the first degree for a second
310 violation, punishable as provided in s. 775.082 or s. 775.083.

311 (c) A felony of the third degree for a third or subsequent
312 violation, punishable as provided in s. 775.082, s. 775.083, or
313 s. 775.084.

314 468.845 Insurance.--A home inspector must maintain a
315 commercial general liability insurance policy in an amount of
316 not less than \$300,000.

317 468.846 Repair cost estimates.--Home inspectors are not
318 required to provide estimates related to the cost of repair of
319 an inspected property.

320 468.847 Statute of limitations.--Chapter 95 governs when
321 an action to enforce an obligation, duty, or right arising under
322 this part must be commenced.

323 468.848 Grandfather clause.--Until January 1, 2008,
324 notwithstanding any other provision of this part, a person who
325 meets the following criteria may work as a home inspector:

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(1) Has successfully completed high school or its equivalent or has been in the business of home inspection services for at least 5 years.

(2) Has been engaged in the practice of home inspection for compensation for at least 3 years prior to January 1, 2007.

(3) Has performed of not fewer than 250 home inspections for compensation.

Section 3. This act shall take effect January 1, 2008.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to building assessment and remediation; creating pt. XV of ch. 468, F.S., relating to regulation of mold assessment and mold remediation; providing legislative intent; providing definitions; providing requirements for practice of mold assessment or mold remediation; providing exemptions; providing for prohibited acts and penalties; providing insurance requirements; providing for contracts to perform mold assessment or mold remediation; providing a statute of limitations; providing a grandfather clause; creating pt. XVI of ch. 468, F.S., relating to regulation of home inspection services; providing definitions; providing requirements for practice; providing exemptions; providing prohibited acts and penalties; requiring liability insurance; exempting certain persons from duty to provide repair cost estimates; providing a statute of limitations; providing a grandfather clause; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

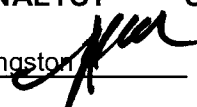

BILL #: HB 1367

Contracting Exemptions

SPONSOR(S): Evers

TIED BILLS:

IDEN./SIM. BILLS: SB 2472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>		Livingston 	Liepshutz 
2) <u>Local Government Council</u>			
3) <u>Commerce Council</u>			
4) _____			
5) _____			

SUMMARY ANALYSIS

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the DBPR. Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR. With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified by or registered with the CILB or ECLB, as appropriate.

Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are "owners of property when building one or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$25,000, on such property for the occupancy or use of such owner and not offered for sale or lease."

Similar regulatory provisions, as above, apply to electrical contracting.

The bill increases the construction ceiling from \$25,000 to \$75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties.

The bill creates a construction licensure exemption for owners of residential rental property relating to roofing and reroofing after the issuance of an Executive Order by the Governor declaring the existence of a state of emergency. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

The bill is not anticipated to have a significant fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1367.BR.doc

DATE: 3/20/2006

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government/Promote personal responsibilities - The bill expands opportunities for property owners to improve their facilities under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Part I of chapter 489, F.S., addresses construction contracting. Construction contractors are governed by the Construction Industry Licensing Board (CILB), under the DBPR. Part II of chapter 489, F.S., addresses electrical and alarm system contractors who are governed by the Electrical Contractors' Licensing Board (ECLB) under the DBPR.

Construction contracting essentially means building or altering a structure, for compensation. Several specific varieties of contracting are set forth in the chapter, each with a license that may be obtained for that activity, such as for roofing, plumbing, etc. Section 489.115, F.S., provides that no person may engage in the business of contracting in the state without first being certified or registered in one or more of the defined contracting categories. The reference to the term license is often statutorily used interchangeably with the terms certificate or registration.

Similar regulatory provisions, as above, apply to electrical contracting.

With certain statutorily specified exceptions, individuals who practice contracting in Florida must be certified by or registered with the CILB or ECLB, as appropriate. Certification allows an individual to practice contracting in any jurisdiction in the state. A "certificate" may be issued to a person who makes application, shows appropriate education and experience and passes a state examination.

"Registration" allows an individual to practice contracting only in the jurisdiction which issues that individual's local license. The registration is issued by the DBPR upon proof of local licensure. Proof consists of an occupational license issued by the local jurisdiction, and evidence of compliance with local licensing requirements, if a local licensing requirement exists.

Currently, s. 489.103(7), F.S., provides, in part, for an exemption from licensure as a construction contractor for persons who comply with statutorily specified requirements and who are

owners of property....when building one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$25,000, on such property for the occupancy or use of such owner and not offered for sale or lease....

The residential exemption allows an unlimited cost of construction for residential property and the commercial exemption caps commercial costs at \$25,000.

Statutory regulation of construction contracting has existed for some time.

Authority for issuance of state and local licenses has been provided by chapter 205, Florida Statutes, for all types of contractors from 1937. This law does not require competency assurance, but is primarily a revenue source which identifies the contractor through a required license. However, many local occupational licensing operations have included examination for competency as a prerequisite to issuance of licenses.¹

¹ See Fla. S. Comm. on Govtl. Ops., A Review of Chapter 468, Part II, F.S., Licensing of Construction Industry, (Nov., 1978) (Prepared Pursuant to the Regulatory Reform Act, Chapter 76-168, Laws of Florida) (on file with comm.).

State regulation of general contractors, building contractors, and residential building contractors was initiated in 1967 by chapter 67-110, Laws of Florida, codified as part II, chapter 468, F.S. This act created the CILB, provided its duties and responsibilities, and, with statutorily specified exemptions, established mandatory statewide certification or locally restricted registration. One of the exemptions, with restrictions, applied to residential property owners when working on their own homes.

The residential exemption language was amended in 1972 and the changes added the provision that owners of commercial property are exempt from licensure when "...building or improving commercial buildings at a cost of under twenty-five thousand dollars (\$25,000) on such property..." An additional limitation was also added to restrict the exemption if the residential or commercial property is offered for "lease" in addition to the sale of the property.

Construction activity pursuant to ss. 489.103 (7) and 489.503, F.S. by an owner of the property, must be conducted in accordance with the same standards as a licensed practitioner, such as compliance with appropriate building codes, providing workers' compensation coverage, etc.

Currently, the CILB and ECLB have sole authority to discipline state certified contractors. Local jurisdictions can discipline contractors holding locally issued licenses. In theory, the discipline is then reported to the CILB, who may act against the state registration.

Unlicensed construction contracting, as generally understood, is actually a set of specific violations set forth as paragraphs under s. 489.127(1) [and similar provisions in 489.531 relating to electrical contracting], F.S. This section provides, in part, that no person shall:

- engage in the business or act in the capacity of a contractor or advertise himself or herself or a business organization as available to engage in the business or act in the capacity of a contractor without being duly registered or certified or having a certificate of authority; and
- commence or perform work for which a building permit is required pursuant to part VII of chapter 553, F.S., without such building permit being in effect; or
- willfully or deliberately disregard or violate any municipal or county ordinance relating to uncertified or unregistered contractors.

This section also provides criminal penalties for unlicensed activity. An unlicensed person who violates applicable prohibitions commits a first degree misdemeanor for a first offense and a felony for subsequent offenses. Any unlicensed person who commits a violation of one of the above provisions during the existence of a state of emergency declared by executive order of the Governor commits a third degree felony.

Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR. Among these powers is the authority to enforce unlicensed activity provisions pursuant to s. 455.228, F.S. The DBPR may impose administrative penalties including fines in an amount not to exceed \$5,000 against any person not licensed by the DBPR or a regulatory Board within the DBPR and who violates a regulatory statute.

Effect of proposed changes

The bill increases the construction ceiling from \$25,000 to \$75,000 for exemption from licensure as a construction contractor for persons who are owners of property and are building or improving commercial buildings on the property for the occupancy or use of the owner and not offered for sale or lease.

The bill requires the property owner to satisfy any applicable local permitting agency requirements demonstrating that the owner has an understanding of the owner's responsibilities and obligations under the construction statutes. If a person violates the exemption requirements, the bill requires the

local permitting agency to withhold final approval of the project, revoke the permit, or pursue any action or remedy for unlicensed activity.

Similarly, the bill increases the owner licensure exemption ceiling for electrical work on commercial buildings from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties in the same manner as for the property owner construction exemption.

The bill creates a construction licensure exemption for owners of residential rental property relating to roofing and reroofing after the issuance of an Executive Order by the Governor declaring the existence of a state of emergency. The exemption would apply when repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of the owner of the property or tenant of the owner. The bill limits the exemption to a situation where the property has been damaged by natural causes from an event designated by executive order issued by the Governor declaring the existence of a state of emergency, such as the aftermath of a hurricane.

C. SECTION DIRECTORY:

Section 1. Amends s. 489.103, F.S., to increase the construction ceiling from \$25,000 to 75,000 and imposes ownership responsibilities and potential penalties; creates an additional construction licensure exemption for owners of property relating to roofing and reroofing contracts.

Section 2. Amends s. 489.503, F.S., to increase the construction ceiling from \$25,000 to \$75,000 and imposes ownership responsibilities and potential penalties.

Section 3. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill expands opportunities for property owners to improve their facilities under certain circumstances.

D. FISCAL COMMENTS:

The DBPR notes, "There is no fiscal impact on the department as the bill merely expands the parameters of certain existing licensure exemptions."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to contracting exemptions; amending ss. 489.103 and 489.503, F.S.; revising exemptions for certain owners of property from certain contracting provisions; increasing maximum construction costs allowed for exemption; requiring owners of property to satisfy certain local permitting agency requirements; providing for penalties; providing an exemption for owners of property damaged by certain natural causes; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 489.103, Florida Statutes, is amended to read:

489.103 Exemptions.--This part does not apply to:

(7) Owners of property when acting as their own contractor and providing direct, onsite supervision themselves of all work not performed by licensed contractors;

(a) When building or improving farm outbuildings or one-family or two-family residences on such property for the occupancy or use of such owners and not offered for sale or lease, or building or improving commercial buildings, at a cost not to exceed \$75,000 ~~\$25,000~~, on such property for the occupancy or use of such owners and not offered for sale or lease. In an action brought under this part, proof of the sale or lease, or offering for sale or lease, of any such structure by the owner-builder within 1 year after completion of same

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creates a presumption that the construction was undertaken for purposes of sale or lease.

(b) When repairing or replacing wood shakes or asphalt or fiberglass shingles on one-family, two-family, or three-family residences for the occupancy or use of such owner or tenant of the owner and not offered for sale within 1 year after completion of the work and when the property has been damaged by natural causes from an event recognized as an emergency situation designated by executive order issued by the Governor declaring the existence of a state of emergency as a result and consequence of a serious threat posed to the public health, safety, and property in this state.

This subsection does not exempt any person who is employed by or has a contract with such owner and who acts in the capacity of a contractor. The owner may not delegate the owner's responsibility to directly supervise all work to any other person unless that person is registered or certified under this part and the work being performed is within the scope of that person's license. For the purposes of this subsection, the term "owners of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner must personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local

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permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the person with a disclosure statement in substantially the following form:

Disclosure Statement

State law requires construction to be done by licensed contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own contractor with certain restrictions even though you do not have a license. You must provide direct, onsite supervision of the construction yourself. You may build or improve a one-family or two-family residence or a farm outbuilding. You may also build or improve a commercial building, provided your costs do not exceed \$75,000 ~~\$25,000~~. The building or residence must be for your own use or occupancy. It may not be built or substantially improved for sale or lease. If you sell or lease a building you have built or substantially improved yourself within 1 year after the construction is complete, the law will presume that you built or substantially improved it for sale or lease, which is a violation of this exemption. You may not hire an unlicensed person to act as your contractor or to supervise people working on your building. It is your responsibility to make sure that people employed by you have licenses required by state law and by county or municipal

licensing ordinances. You may not delegate the responsibility for supervising work to a licensed contractor who is not licensed to perform the work being done. Any person working on your building who is not licensed must work under your direct supervision and must be employed by you, which means that you must deduct F.I.C.A. and withholding tax and provide workers' compensation for that employee, all as prescribed by law. Your construction must comply with all applicable laws, ordinances, building codes, and zoning regulations.

Section 2. Subsection (6) of section 489.503, Florida Statutes, is amended to read:

489.503 Exemptions.--This part does not apply to:

(6) An owner of property making application for permit, supervising, and doing the work in connection with the construction, maintenance, repair, and alteration of and addition to a single-family or duplex residence for his or her own use and occupancy and not intended for sale or an owner of property when acting as his or her own electrical contractor and providing all material supervision himself or herself, when building or improving a farm outbuilding or a single-family or duplex residence on such property for the occupancy or use of such owner and not offered for sale or lease, or building or improving a commercial building with aggregate construction costs of under \$75,000 ~~\$25,000~~ on such property for the occupancy or use of such owner and not offered for sale or lease. In an action brought under this subsection, proof of the sale or lease, or offering for sale or lease, of more than one such structure by the owner-builder within 1 year after

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completion of same is prima facie evidence that the construction was undertaken for purposes of sale or lease. This subsection does not exempt any person who is employed by such owner and who acts in the capacity of a contractor. For the purpose of this subsection, the term "owner of property" includes the owner of a mobile home situated on a leased lot. To qualify for exemption under this subsection, an owner shall personally appear and sign the building permit application and must satisfy local permitting agency requirements, if any, proving that the owner has a complete understanding of the owner's obligations under the law as specified in the disclosure statement in this section. If any person violates the requirements of this subsection, the local permitting agency shall withhold final approval, revoke the permit, or pursue any action or remedy for unlicensed activity against the owner and any person performing work that requires licensure under the permit issued. The local permitting agency shall provide the owner with a disclosure statement in substantially the following form:

Disclosure Statement

State law requires electrical contracting to be done by licensed electrical contractors. You have applied for a permit under an exemption to that law. The exemption allows you, as the owner of your property, to act as your own electrical contractor even though you do not have a license. You may install electrical wiring for a farm outbuilding or a single-family or duplex residence. You may install electrical wiring in a

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141 commercial building the aggregate construction costs of which
142 are under \$75,000 ~~\$25,000~~. The home or building must be for your
143 own use and occupancy. It may not be built for sale or lease. If
144 you sell or lease more than one building you have wired yourself
145 within 1 year after the construction is complete, the law will
146 presume that you built it for sale or lease, which is a
147 violation of this exemption. You may not hire an unlicensed
148 person as your electrical contractor. Your construction shall be
149 done according to building codes and zoning regulations. It is
150 your responsibility to make sure that people employed by you
151 have licenses required by state law and by county or municipal
152 licensing ordinances.

153 Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1383
SPONSOR(S): Bogdanoff
TIED BILLS:

Employee Leasing Companies

IDEN./SIM. BILLS: SB 2276

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation Committee</u>		Livingston <i>[Signature]</i>	Liepshutz <i>[Signature]</i>
2) <u>Insurance Committee</u>			
3) <u>State Administration Appropriations Committee</u>			
4) <u>Commerce Council</u>			
5) _____			

SUMMARY ANALYSIS

Currently, part XI of chapter 468, F.S., provides for the licensing and regulation of employee leasing companies by the Board of Employee Leasing Companies within the Department of Business and Professional Regulation. This part defines "employee leasing," as "...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client."

The bill revises various provisions relating to employee leasing companies.

- Revises membership criteria for consumer members of the Board of Employee Leasing Companies.
- Revises net-worth requirements for such companies. Deletes authorization to review rather than audit some financial statements.
- Requires a company to make certain information available to the Department of Financial Services.
- Prescribes circumstances under which a person is considered a leased employee.
- Requires maintenance of workers' compensation coverage for leased employees.

The bill is not anticipated to have a significant fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to impact the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Currently, part XI of chapter 468, F.S., provides for the licensing and regulation of employee leasing companies by the Board of Employee Leasing Companies (board) within the Department of Business and Professional Regulation (DBPR). The board is comprised of seven members, appointed by the Governor, and confirmed by the Senate. Five members of the board must be persons engaged in the employee leasing industry and licensed under the employee leasing laws. The remaining two members are required to be Florida residents without any ties to the employee leasing business.

Part XI defines "employee leasing," as "...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client."

Section 1. The bill requires that one of the remaining two board members that are not engaged in the employee leasing industry must represent small employers and the other remaining board member must have experience in the field of insurance regulation.

Present situation

Employee leasing companies are subject to the following financial requirements:

- For initial licensure as an employee leasing company, an applicant must provide a tangible accounting net worth of not less than \$50,000;
- An applicant for initial or renewal licensure is required to have an accounting net worth or have guaranties, letters of credit, or other security acceptable to the board in a sufficient amount to offset any deficiency;
- All licensees must submit a quarterly report that includes a balance sheet and an income statement, that affirms positive working capital or provides guaranties, letters of credit, or other security to offset any deficiency. In calculating the amount of working capital, a licensee is required to include adequate reserves for all taxes and insurance; and
- Each employee leasing company or leasing company group with \$2.5 million or more in payroll is required to submit annual financial statements audited by an independent certified public accountant with the application, and within 120 days after the end of the fiscal year. If the payroll is less than \$2.5 million, annual financial statements are subject to only a review by an independent certified public accountant.

Section 2. The bill changes the financial standard to require a tangible accounting net worth of not less than \$100,000 at the time of licensure and this level would have to be maintained at all times after licensure. Also, letters of credit, guaranties or other securities would not be allowed. The bill requires that information as to who is providing workers' compensation be provided to all leased employees by the leasing company.

Present situation

As part of the credit underwriting process, some employee leasing companies currently review the credit scores and financial statements of potential client companies and require a deposit or a letter of

credit, if warranted. In some instances, this credit review is not triggered unless the payroll exceeds a certain amount. Generally, insurers are required to provide 30-days' notice to the policyholder, in this instance, the employee leasing company, prior to the expiration or cancellation of a workers' compensation policy. For cancellation due to nonpayment, the insurer is required to provide notice 10 days prior to the effective date of the cancellation.

Section 3. The bill requires an employee leasing company to make available to the Department of Financial Services information that is currently available to the workers' compensation insurance carrier.

The bill shortens the time frame from 30 days to 7 days for an employee leasing company to notify necessary state regulators and applicable workers' compensation carriers of the initiation of an employee leasing relationship with a client company. Also, notification is required to be given in a similar 7 day period to the same regulators and carriers following termination of an employee leasing contract with a client company.

The bill clarifies when an employee becomes a leased employee and, therefore, is covered by the obligation of the employee leasing company to provide workers' compensation coverage to leased employees. Section 468.525(4)(f) already requires an employee leasing company to provide notice to the leased employees concerning the relationship between the employee leasing company and the client company. The bill specifies that a person applying to become a leased employee shall become a leased employee upon:

- the receipt by the employee leasing company of the written notice provided by the employee leasing company under s. 468.525(4)(f) which is signed by the applicant acknowledging that the applicant has been informed of the relationship between the employee leasing company and the client company;
- the receipt by the employee leasing company of a completed application for employment and any additional forms required by the employee leasing company; or
- the receipt by the applicant of the applicant's first paycheck from the employee leasing company;

whichever occurs first and thus determines the date of employment for the leased employee.

Present situation

For purposes of workers' compensation insurance coverage requirements under ch. 440, F.S., the law defines the term, "employer," to include employment agencies, employee leasing companies, and similar agents who provide employees to other persons. Any person defined as an "employer" by ch. 440, F.S., is required to provide workers' compensation coverage to its employees by either securing coverage or meeting the requirements to self-insure. The employee leasing laws specifically require employee leasing companies to provide coverage to their employees. However, rules of the Board of Employee Leasing Companies appear to conflict with these statutory coverage requirements by allowing, as an option, the client company to provide and maintain such coverage.

A leasing company is required to notify its insurer within five days after the termination of a client. If an employee leasing company has received notice of cancellation or nonrenewal from its insurer, the employee leasing company must notify all client companies within 15 days unless the leasing company obtains another policy with an effective date that is identical to the date of the prior coverage.

Under the provisions of the employee leasing law, an employee leasing company is required to maintain and make available to its workers' compensation insurer certain information concerning client companies and covered employees. Each employee leasing company is also required to notify the Division of Workers' Compensation, the Department of Revenue, and the insurer within 30 days after

the initiation or termination of a client company. However, this provision conflicts with s. 627.192, F.S., of the Insurance Code, which requires an employee leasing company to provide notice to the insurer of a termination of client within 5 days after the termination. Each employee leasing company is required to submit to the Department of Revenue client lists on a biannual basis.

Upon termination of an employee leasing arrangement, each employee leasing company is required to maintain and furnish to the insurer adequate information to permit the calculation of an experience rating modification factor for each lessee or client company upon the termination of the employee leasing agreement. The term, "experience rating modification," means a factor applied to a premium to reflect a risk's variation from the average risk. It is determined by comparing actual losses to expected losses, using the risk's own experience. [s. 627.192(2)(b), F.S.]. The insurer is responsible for reporting to the National Council on Compensation Insurers, Inc., (NCCI) the data necessary to calculate the experience rating modifications for employers.

Section 627.192, F.S., provides in part,

The purpose of this section is to ensure that an employer who leases some or all of its workers properly obtains workers' compensation insurance coverage for all of its employees, including those leased from or coemployed with another entity, and that premium paid by an employee leasing company is commensurate with exposure and anticipated claim experience for all employees.

The DBPR notes:

"Section 4. Currently there is continuing debate within the industry regarding the legality of client-based policies and the lack of a system of reporting to enable the department and board to verify whether client companies are maintaining the required workers' compensation coverage. As written, this bill eliminates client-based workers' compensation policies, therefore no such system would be required to track and verify these policies to ensure compliance."

Section 4. The bill requires information that is reported to the insurer by the lessor must then be reported by the insurer "periodically to its rating organization." The bill further requires: "The rating organization shall report the experience modification factor for a lessee, if that information is available, within 30 days after a request for that information is made by the lessee."

Section 5. Effective date - January 1, 2007.

C. SECTION DIRECTORY:

See A. above

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DBPR anticipates "There will be no significant fiscal impact to the [DBPR]."

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DBPR notes, "The bill will have a disproportionate impact on smaller employee leasing companies due to the additional net worth requirement and the additional costs associated with the submission of audited financial statements rather than the submission of reviewed statements."

The DBPR further notes, "There are currently 54 out of 204 licensed employee leasing companies with a net worth of less than \$100,000, so possibly one fourth of the companies may relinquish their licenses. This information was obtained from the quarterly financial statements submitted by the companies."

D. FISCAL COMMENTS:

The DBPR anticipates the "small number of additional cases can be handled with existing resources."

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The DBPR states that "No specific rulemaking authority is included. Implementation of some provisions will require a moderate amount of rule revisions."

The DBPR further states, "Section 4. This section would change Chapter 627 of the Florida Statutes which deals with Insurance Rates and Contracts. The provision requiring the employee leasing company to maintain the workers' compensation coverage for all leased employees is in conflict with Rule 61G7-10.0014(2)(c), which permits as an option, client-based workers' compensation policies. Rule changes would be required to incorporate this change."

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR comments that "Section 4. Currently there is continuing debate within the industry regarding the legality of client-based policies and the lack of a system of reporting to enable the department and board to verify whether client companies are maintaining the required workers' compensation coverage. As written, this bill eliminates client-based workers' compensation policies, therefore no such system would be required to track and verify these policies to ensure compliance."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to employee leasing companies; amending s.
3 468.521, F.S.; revising the criteria for appointment of
4 members of the Board of Employee Leasing Companies;
5 amending s. 468.525, F.S.; requiring that an applicant for
6 an initial license as an employee leasing company or
7 employee leasing company group license have a specified
8 net worth; deleting provisions that authorize alternative
9 methods of determining net worth; revising provisions
10 requiring maintenance of net worth; authorizing certain
11 financial statements to be prepared on a consolidated or
12 combined basis; deleting provisions authorizing certain
13 companies to submit financial statements that are reviewed
14 rather than audited by a certified public accountant;
15 requiring that an employee leasing company provide written
16 notice to leased employees under certain circumstances;
17 amending s. 468.529, F.S.; requiring that an employee
18 leasing company make certain information available to the
19 Department of Financial Services; revising procedures for
20 notices of initiation and termination of an employee
21 leasing company contract with a client company;
22 prescribing circumstances under which a person becomes a
23 leased employee; amending s. 627.192, F.S.; requiring a
24 workers' compensation insurer providing coverage for
25 employee leasing companies to provide certain information
26 to the rating organization; requiring a report by the
27 rating organization to the lessee under certain
28 circumstances; requiring workers' compensation coverage

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for leased employees; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 468.521, Florida Statutes, is amended to read:

468.521 Board of Employee Leasing Companies; membership; appointments; terms.--

(2) Five members of the board shall be chosen from individuals already engaged in the employee leasing industry and must be licensed pursuant to this part. One of the licensed members must be in an employee leasing company that has an annual gross Florida payroll for its leased employees which is among the smallest 20 percent of licensed employee leasing companies in the state at the time of the member's appointment and each reappointment. The remaining two board members shall be residents of this state and must not be, or ever have been, connected with the business of employee leasing. One of the remaining two board members must represent small employers, and the other remaining board member must have experience in the field of insurance regulation.

Section 2. Subsection (3) and paragraph (f) of subsection (4) of section 468.525, Florida Statutes, are amended to read:

468.525 License requirements.--

(3) Each employee leasing company licensed by the department shall have a registered agent for service of process in this state and at least one licensed controlling person. In addition, each licensed employee leasing company shall comply

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with the following requirements:

(a) The employment relationship with workers provided by the employee leasing company to a client company shall be established by written agreement between the leasing company and the client, and written notice of that relationship shall be given by the employee leasing company to each worker who is assigned to perform services at the client company's worksite.

(b) An applicant for an initial employee leasing company license or employee leasing company group license shall have a tangible accounting net worth of not less than \$100,000 in accordance with generally accepted accounting principles \$50,000.

~~(c) An applicant for initial or renewal license of an employee leasing company license or employee leasing company group shall have an accounting net worth or shall have guaranties, letters of credit, or other security acceptable to the board in sufficient amounts to offset any deficiency. A guaranty will not be acceptable to satisfy this requirement unless the applicant submits sufficient evidence to satisfy the board that the guarantor has adequate resources to satisfy the obligation of the guaranty.~~

(c)-(d) Each employee leasing company and employee leasing company group shall maintain at all times after licensure a tangible an accounting net worth of at least \$100,000 and positive working capital, as determined in accordance with generally accepted accounting principles, or shall have guaranties, letters of credit, or other security acceptable to the board in sufficient amounts to offset any deficiency in net

85 worth or working capital. A guaranty will not be acceptable to
86 satisfy this requirement unless the licensee submits sufficient
87 evidence, as defined by rule, that the guarantor has adequate
88 resources to satisfy the obligation of the guaranty. In
89 determining the amount of working capital, a licensee shall
90 include adequate reserves for all taxes and insurance, including
91 plans of self-insurance or partial self-insurance for claims
92 incurred but not paid and for claims incurred but not reported.
93 Compliance with the requirements of this paragraph is subject to
94 verification by department or board audit.

95 (d)~~(e)~~ Each employee leasing company or employee leasing
96 company group shall submit annual financial statements audited
97 by an independent certified public accountant, with the
98 application and within 120 days after the end of each fiscal
99 year, in a manner and time prescribed by the board. The
100 financial statements may be prepared on a consolidated or
101 combined basis., ~~provided however, that any employee leasing~~
102 ~~company or employee leasing company group with gross Florida~~
103 ~~payroll of less than \$2.5 million during any fiscal year may~~
104 ~~submit financial statements reviewed by an independent certified~~
105 ~~public accountant for that year.~~

106 (e)~~(f)~~ The licensee shall notify the department or board
107 in writing within 30 days after any change in the application or
108 status of the license.

109 (f)~~(g)~~ Each employee leasing company or employee leasing
110 company group shall maintain accounting and employment records
111 relating to all employee leasing activities for a minimum of 3
112 calendar years.

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(4) The employee leasing company's contractual arrangements with its client companies shall satisfy the following conditions, whereby the leasing company:

(f) Is obligated to give ~~Has given~~ written notice of the relationship between the employee leasing company and the client company to all each leased employees as to whether the employee leasing company is providing workers' compensation coverage ~~employee it assigns to perform services at the client's worksite.~~

Section 3. Section 468.529, Florida Statutes, is amended to read:

468.529 Licensee's insurance; employment tax; benefit plans.--

(1) A licensed employee leasing company is the employer of the leased employees, except that this provision is not intended to affect the determination of any issue arising under Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. An employee leasing company shall be responsible for timely payment of unemployment taxes pursuant to chapter 443, and shall be responsible for providing workers' compensation coverage pursuant to chapter 440. However, no licensed employee leasing company shall sponsor a plan of self-insurance for health benefits, except as may be permitted by the provisions of the Florida Insurance Code or, if applicable, by Pub. L. No. 93-406, the Employee Retirement Income Security Act, as amended from time to time. For purposes of this section, a "plan of self-insurance" shall exclude any arrangement where an admitted insurance carrier has issued a policy of insurance

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141 primarily responsible for the obligations of the health plan.

142 (2) An initial or renewal license may not be issued to any
143 employee leasing company unless the employee leasing company
144 first files with the board evidence of workers' compensation
145 coverage for all leased employees in this state. Each employee
146 leasing company shall maintain and make available to its
147 workers' compensation carrier and the Department of Financial
148 Services the following information:

149 (a) The correct name and federal identification number of
150 each client company.

151 (b) A listing of all covered employees provided to each
152 client company, by classification code.

153 (c) The total eligible wages by classification code and
154 the premiums due to the carrier for the employees provided to
155 each client company.

156 (3) A licensed employee leasing company shall within 7 30
157 days after initiation of an employee leasing company contract
158 with a client company or termination notify, in a format
159 acceptable to the Department of Financial Services, its workers'
160 compensation insurance carrier, the Division of Workers'
161 Compensation of the Department of Financial Services, and the
162 state agency providing unemployment tax collection services
163 under contract with the Agency for Workforce Innovation through
164 an interagency agreement pursuant to s. 443.1316 of both the
165 initiation or the termination of the employee leasing company's
166 relationship with the any client company. A notice of
167 termination of an employee leasing company's contract with a
168 client company shall be provided as set forth in this subsection

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169 to those agencies and entities within 7 days after the employee
 170 leasing company's receipt of written notification from the
 171 client company that it is terminating the contractual
 172 relationship with the employee leasing company or within 7 days
 173 after receipt by the client company of the employee leasing
 174 company's written notification that it is terminating the
 175 contractual relationship with the client company. Such
 176 notification must set forth the date of termination of the
 177 employee leasing relationship.

178 (4) An initial or renewal license may not be issued to any
 179 employee leasing company unless the employee leasing company
 180 first provides evidence to the board, as required by board rule,
 181 that the employee leasing company has paid all of the employee
 182 leasing company's obligations for payroll, payroll-related
 183 taxes, workers' compensation insurance, and employee benefits.
 184 All disputed amounts must be disclosed in the application.

185 (5) A person applying to become a leased employee shall
 186 become a leased employee upon the receipt by the employee
 187 leasing company of the written notice provided by the employee
 188 leasing company under s. 468.525(4)(f) which is signed by the
 189 applicant acknowledging that the applicant has been informed of
 190 the relationship between the employee leasing company and the
 191 client company, the receipt by the employee leasing company of a
 192 completed application for employment and any additional forms
 193 required by the employee leasing company, or the receipt by the
 194 applicant of the applicant's first paycheck from the employee
 195 leasing company, whichever occurs first.

196 ~~(6)-(5)~~ The provisions of this section are subject to

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verification by department or board audit.

Section 4. Subsection (4) of section 627.192, Florida Statutes, is amended, and subsection (11) is added to that section, to read:

627.192 Workers' compensation insurance; employee leasing arrangements.--

(4) A lessor that applies for coverage or is covered through the voluntary market shall also maintain and furnish to the insurer on an annual basis, and as the insurer may otherwise reasonably require, sufficient information to permit the calculation of an experience modification factor for each lessee upon termination of the employee leasing relationship. The insurer shall report periodically to its rating organization such information submitted by each lessor. Information accruing during the term of the leasing arrangement which is used to calculate an experience modification factor for a lessee upon termination of the leasing relationship shall continue to be used in the future experience ratings of the lessor. The rating organization shall report the experience modification factor for a lessee, if that information is available, within 30 days after a request for that information is made by the lessee. Such information shall include:

(a) The lessee's corporate name.

(b) The lessee's taxpayer or employer identification number.

(c) Payroll summaries and class codes applicable to each lessee, and, if requested by the insurer, a listing of all leased employees associated with a given lessee.

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225 (d) Claims information grouped by lessee, and any other
226 information maintained by or readily available to the lessor
227 that is necessary for the calculation of an experience
228 modification factor for each lessee.

229 (11) Except as otherwise authorized, a lessor shall
230 provide workers' compensation insurance coverage to all leased
231 employees of a lessee.

232 Section 5. This act shall take effect January 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. 1383

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Council/Committee hearing bill: Business Regulation

2 Representative(s) Bogdanoff offered the following:

3
4 **Amendment**

5 On line 79 remove:

6 a tangible an

7 and insert:

8 an

9
10
000000

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. 1383

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Business Regulation

2 Representative(s) Bogdanoff offered the following:

3
4 **Amendment**

5 Line(s) 156, 169, and 172 before the word "days" insert:

6 business
7
8



000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1611
SPONSOR(S): Goldstein
TIED BILLS:

Practice of Interior Design

IDEN./SIM. BILLS: SB 2652

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee		Livingston 	Liepshutz 
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the Department of Business and Professional Regulation (DBPR). Practitioners must meet licensure requirements in order to legally practice their profession.

The bill:

amends the definition of "space planning" to add the terms "interior partitions" and "furniture systems" so the definition reads:

"Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts of interior partitions, furniture systems, and final planning."

authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any professional services.

prohibits the use of an unlicensed individual to provide engineering or architectural services, plumbing or electrical work, landscape services, or other work requiring a licensed professional if the work is performed for an interior design construction contract administered by a registered interior designer or by a registered interior designer performing project management as the owner's representative.

It is not anticipated that the bill will have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to impact the House principles.

B. EFFECT OF PROPOSED CHANGES:

Present situation

Current regulation of professions is carried out by DBPR, in part, by licensing practitioners. Each profession is administered either directly by the DBPR or through a separately appointed board, council, or a commission. Regulation is intended to protect the public by ensuring that licensed professionals meet prescribed standards of education, competency, and practice. Chapter 455, F.S., provides general powers for the regulation of the areas of jurisdiction under the DBPR.

Part I of chapter 481, F.S., regulates architects and interior designers. Both professions are regulated by the Board of Architecture and Interior Design under the DBPR. Practitioners must meet licensure requirements in order to legally practice their profession.

Interior design is defined to mean

designs, consultations, studies, drawings, specifications, and administration of design construction contracts relating to nonstructural interior elements of a building or structure. "Interior design" includes, but is not limited to, reflected ceiling plans, space planning, furnishings, and the fabrication of nonstructural elements within and surrounding interior spaces of buildings. "Interior design" specifically excludes the design of or the responsibility for architectural and engineering work, except for specification of fixtures and their location within interior spaces. As used in this subsection, "architectural and engineering interior construction relating to the building systems" includes, but is not limited to, construction of structural, mechanical, plumbing, heating, air-conditioning, ventilating, electrical, or vertical transportation systems, or construction which materially affects lifesafety systems pertaining to firesafety protection such as fire-rated separations between interior spaces, fire-rated vertical shafts in multistory structures, fire-rated protection of structural elements, smoke evacuation and compartmentalization, emergency ingress or egress systems, and emergency alarm systems.

"Registered interior designer" or "interior designer" means a natural person who is licensed under this part.

Various acts constitute grounds for which the disciplinary actions may be taken. For instance, a person may not knowingly: practice interior design unless the person is a registered interior designer unless specifically exempted; use the name or title "architect" or "registered architect," or "interior designer" or "registered interior designer," or words to that effect, when the person is not then the holder of a valid license issued pursuant to this part; or employ unlicensed persons to practice architecture or interior design

Effect of proposed changes

The bill:

amends the definition of "space planning" to add the terms "interior partitions" and "furniture systems" so the definition reads:

"Space planning" means the analysis, programming, or design of spatial requirements, including preliminary space layouts of interior partitions, furniture systems, and final planning."

authorizes a person who has been licensed as a practitioner by the board and who chooses to relinquish or not to renew his or her license may use the title "Interior Designer, Retired" but may not otherwise render any professional services.

prohibits the use of an unlicensed individual to provide engineering or architectural services, plumbing or electrical work, landscape services, or other work requiring a licensed professional if the work is performed for an interior design construction contract administered by a registered interior designer or by a registered interior designer performing project management or oversight as the owner's representative.

C. SECTION DIRECTORY:

Section 1. Amends s. 481.203, F.S., relating to the definition of "space planning."

Section 2. Amends s. 481.223, F.S., to allow the use of the title interior designer, retired" and prohibit unlicensed activity.

Section 3. Effective date - July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not anticipated to be significant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

NA.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to the practice of interior design;
amending s. 481.203, F.S.; redefining the term "space
planning"; amending s. 481.223, F.S.; authorizing retired
interior designers to use the title "interior designer,
retired"; prohibiting a person from performing certain
acts without employing a registered interior designer;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (12) of section 481.203, Florida
Statutes, is amended to read:

481.203 Definitions.--As used in this part:

(12) "Space planning" means the analysis, programming, or
design of spatial requirements, including preliminary space
layouts of interior partitions, furniture systems, and final
planning.

Section 2. Subsection (1) of section 481.223, Florida
Statutes, is amended to read:

481.223 Prohibitions; penalties; injunctive relief.--

(1) A person may not knowingly:

(a) Practice architecture unless the person is an
architect or a registered architect;

(b) Practice interior design unless the person is a
registered interior designer unless otherwise exempted herein.
However, a licensed interior designer who relinquishes or does
not renew his or her license may use the title "interior

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designer, retired" but may not render any interior design
services;

(c) Use the name or title "architect" or "registered
architect," or "interior designer" or "registered interior
designer," or words to that effect, when the person is not then
the holder of a valid license issued pursuant to this part;

(d) Present as his or her own the license of another;

(e) Give false or forged evidence to the board or a member
thereof;

(f) Use or attempt to use an architect or interior
designer license that has been suspended, revoked, or placed on
inactive or delinquent status;

(g) Employ unlicensed persons to practice architecture or
interior design; or

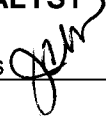

(h) Conceal information relative to violations of this
part; or

(i) Use an unlicensed individual to provide engineering or
architectural services, plumbing or electrical work, landscape
services, or other work requiring a licensed professional if the
work is performed for an interior design construction contract
administered by a registered interior designer or by a
registered interior designer performing project management or
oversight as the owner's representative.

Section 3. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB BR 06-01 Repealing Authorization for Slot Machines in Miami-Dade County
SPONSOR(S): Business Regulation Committee
TIED BILLS: **IDEN./SIM. BILLS:** SJR 2754 (i), HJR 185 (s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Business Regulation Committee		Morris 	Liepshutz 
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

At the 2004 General Election, voters approved an amendment to the Florida Constitution that permitted two counties, Broward and Miami-Dade, to hold referenda on whether to permit slot machine gaming in certain pari-mutuel facilities within their respective counties. County-wide referenda were held in both counties on March 8, 2005. The referendum passed in Broward County but was defeated in Miami-Dade County.

This joint resolution proposes to amend Article X, Section 23 of the Florida Constitution to eliminate authorization for Miami-Dade County to hold future referenda on whether to authorize slot machines at certain licensed pari-mutuel facilities in that county and to delete obsolete provisions relating to its initial adoption and implementation.

The proposal would have an insignificant fiscal impact on the Department of State, Division of Elections, as a result of placing the proposed amendment on the ballot and publishing the required notices. A Bill Impact Conference to estimate the potential fiscal impact that passage of this proposed amendment in the 2006 General Election might have on collections from the tax on slot machine revenue has not been scheduled.

The proposed joint resolution does not contain a specific effective date; therefore, if adopted by the voters it would take effect January 2, 2007.

Joint resolutions require a simple majority vote in committee but require a three-fifths vote of the membership of each house for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty—Passage of this constitutional amendment by voters in the statewide 2006 General Election will preclude voters in Miami-Dade County from exercising what is now a constitutionally provided right to vote on a matter related to slot machine gaming in that county.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Article X, Section 23 of the Florida Constitution was created when Amendment 4 was approved by the voters at the November 2004 General Election. This constitutional provision permitted two counties, Broward and Miami-Dade, to hold referenda on whether to permit slot machine gaming in certain pari-mutuel facilities within their respective counties

Article X, Section 23, Florida Constitution reads as follows:

SECTION 23. Slot machines.--

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

(b) In the next regular Legislative session occurring after voter approval of this constitutional amendment, the Legislature shall adopt legislation implementing this section and having an effective date no later than July 1 of the year following voter approval of this amendment. Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

(d) This amendment shall become effective when approved by vote of the electors of the state.

On March 8, 2005, both Broward and Miami-Dade Counties held local referendums on whether to authorize slot machines in their respective counties. Voters in Broward County approved the measure while voters in Miami-Dade County voted against authorizing slot machines in that county. Voters in Miami-Dade County may vote again on this issue in March 2007, which is two years following the initial vote.

During the 2005-A Special Session, the Legislature enacted Chapter 2005-362, Laws of Florida, which provided the regulatory framework for implementing Art. X, Sec. 23. This act was codified as chapter 551, Florida Statutes, and took effect January 4, 2006.

The Division of Pari-mutuel Wagering in the Department of Business and Professional Regulation is the regulatory agency charged with oversight of slot machine gaming and the Division has begun the preliminary fact-finding and rulemaking processes necessary to implement this legislation.

Proposed Change

This proposed House Joint Resolution seeks to amend Art. X, Sec. 23 of the Florida Constitution to eliminate authorization for Miami-Dade County to hold a referendum on whether to authorize slot machines at certain licensed pari-mutuel facilities in that county and to delete obsolete provisions relating to its initial adoption and implementation.

If this joint resolution is passed during this legislative session, the proposed revision would be placed before the electorate at the November 2006 General Election, and if adopted will take effect January 2, 2007.

C. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The proposal would have an insignificant fiscal impact on the Department of State, Division of Elections, as a result of placing the proposed amendment on the ballot and publishing the required notices.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Repeal of the authorization for Miami-Dade County to hold a future referendum on whether to authorize slot machine gaming at certain pari-mutuel facilities in that county will have an adverse impact on those pari-mutuel facilities by precluding them from the potential expansion into the lucrative slot machine gaming market.

Conversely, repeal of this authorization will likely increase the value and the profitability of the four Broward County pari-mutuel facilities, as well as the Indian gaming facilities in both counties.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision of Article VII, Section 18 of the Florida Constitution applies only to general bills.

2. Other:

Article XI, Section 1 of the Florida Constitution provides the Legislature with the authority to propose amendments to the Florida Constitution by joint resolution approved by three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or may be placed on the ballot at a special election held for that purpose.

The Florida Constitution provides that if a proposed amendment or revision is approved by the vote of electors, it is effective as an amendment to or revision of the Constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.¹ Since this proposed revision does not specify an effective date, if adopted it would take effect January 2, 2007.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

¹ See Art. XI, s.5(e), Fla. Const.
STORAGE NAME: pcb01.BR.doc
DATE: 3/21/2006

BILL PCB BR 06-01

2006

House Joint Resolution

A joint resolution proposing an amendment to Section 23 of Article X of the State Constitution, which section allows Miami-Dade and Broward Counties, by referendum, to permit slot machines at certain pari-mutuel facilities.

Be It Resolved by the Legislature of the State of Florida:

That the following amendment to Section 23 of Article X of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier election specifically authorized by law for that purpose:

ARTICLE X

MISCELLANEOUS

SECTION 23. Slot machines.--

(a) ~~After voter approval of this constitutional amendment,~~
The governing body ~~bodies~~ of Miami-Dade and Broward County
~~Counties each~~ may hold a county-wide referendum in that county
~~their respective counties~~ on whether to authorize slot machines
within existing, licensed parimutuel facilities (thoroughbred and
harness racing, greyhound racing, and jai-alai) that have
conducted live racing or games in that county during ~~each of the~~
~~last two calendar~~ years 2002 and 2003 ~~before the effective date~~
~~of this amendment~~. If the voters of such county approve the
referendum question by majority vote, slot machines shall be
authorized in such parimutuel facilities. If the voters of such
county by majority vote disapprove the referendum question, slot
machines shall not be so authorized, and the question shall not

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be presented in another referendum in that county for at least two years.

(b) ~~In the next regular legislative session occurring after voter approval of this constitutional amendment,~~ The Legislature shall adopt legislation implementing this section ~~and having an effective date no later than July 1 of the year following voter approval of this amendment.~~ Such legislation shall authorize agency rules for implementation, and may include provisions for the licensure and regulation of slot machines. The Legislature may tax slot machine revenues, and any such taxes must supplement public education funding statewide.

(c) If any part of this section is held invalid for any reason, the remaining portion or portions shall be severed from the invalid portion and given the fullest possible force and effect.

~~(d) This amendment shall become effective when approved by vote of the electors of the state.~~

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE X, SECTION 23

REPEALING AUTHORIZATION FOR SLOT MACHINES IN MIAMI-DADE COUNTY.--Proposing an amendment to the State Constitution to eliminate authorization for Miami-Dade County to hold a referendum on whether to authorize slot machines at certain licensed pari-mutuel facilities in that county and to delete obsolete provisions in Section 23 of Article X relating to its initial adoption and implementation.